



Commonwealth  
of Massachusetts

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*One Ashburton Place, Room 411*  
*Boston, MA 02108*

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**Advisory Opinion**

May 18, 1998  
AO-98-10

Paul F. O'Connell  
55 Gilchrist Road  
Townsend, MA 01469

Re: Political fundraising by part-time members of National Guard

Dear Mr. O'Connell:

This letter is in response to your April 9 request for an opinion regarding the application of the campaign finance law's prohibition on public employee fundraising to part-time members of the National Guard.

**Facts**

You have stated that in addition to being self-employed on a full-time basis, you are a part-time member of the Massachusetts Army National Guard: you drill one weekend a month and perform two weeks of active duty every year. The active duty is generally performed during the summer. Duty is performed pursuant to orders issued under Title 32 of the U.S. Code. Your paycheck is issued by the federal government. You would like to know if you may host a fund raising event at your home for a candidate. You would like to actively solicit people to attend and donate money to the campaign.

**Question**

As a part-time member of the Guard may you host the fund raising event and solicit contributions for the candidate?

**Answer**

No.

**Discussion**

The campaign finance law prohibits persons, other than elected officials, who are "employed for compensation . . . by the commonwealth . . ." from soliciting or receiving any contribution or other thing of value for the political campaign purposes of any candidate for state or local office in Massachusetts. See M.G.L. c. 55,

§ 13.<sup>1</sup> The fundamental purpose of section 13 is “to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls . . .” Anderson v. City of Boston, 376 Mass. 178 at 186-187 (1978).

The office has consistently interpreted the term “employed for compensation” in section 13 to include part-time public employees. See interpretive bulletin IB-92-01, in which the office stated that “‘persons employed for compensation’ include both full-time and part-time employees who receive any amount of compensation. The prohibition applies ‘at any time - during working hours and non-working hours.’” See enclosed *Guide to Political Activity for State, County and Municipal Employees*.

In AO-93-24 the office stated that a call fire fighter, paid on an hourly basis when responding to emergencies, was a part-time public employee subject to section 13. Although the fire fighter may have worked only a few days each year, the fundamental nature of his obligation to the town was ongoing. We also noted that the call fire fighter was under the control and supervision of other government employees, i.e., that the call fire fighter was not an independent contractor. Part-time members of the Guard, like call fire fighters, are employees of the commonwealth and receive compensation for occasional service. In addition, part-time Guard members generally perform Active Duty training on a regular basis.

Guard members are subject to the Massachusetts campaign finance law’s restrictions on political fundraising notwithstanding their receipt of a federal rather than a state paycheck: A person is considered a public employee subject to section 13 if that person is **under the control** of the commonwealth or one of its subdivisions. See AO-95-26. Therefore, a Guard member is subject to the Massachusetts campaign finance law unless performing duty under Title 10 orders, i.e. called on to perform services under the authority of the President such as deployment as part of a military or peacekeeping action undertaken by the United States. Members of the National Guard “take a dual oath – to support the Nation as well as the States and to obey the President as well as the Governor.” Perpich v. Department of Defense, 196 U.S. 346, 343-344 (1990). There are “two overlapping but distinct organizations . . . the National Guard of the various States and the National Guard of the United States.” Id., at 345; Title 32 of the U.S. Code. Therefore, Massachusetts Army National Guard personnel, unless federalized in accordance with Title 10, are under the control of the Governor and are generally subject to M.G.L. c. 55, even if they may also be required to comply with the Hatch Act and regulations applicable to members of the armed forces.

We recognize that the application of section 13 to part-time Guard members represents a different approach than Army regulations which apply similar fundraising restrictions to part-time Guard members only when such members are on Active Duty. Given the language of section 13 and the office’s established interpretation of the language, we must read the statute to encompass part-time Guard members, unless and until the statute is amended by the Legislature.

This opinion is issued solely within the context of the campaign finance law and is provided on the basis of representations in your letter.

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<sup>1</sup> In addition, section 14 provides that no person, whether state employee or otherwise, shall “in any building occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value” for political campaign purposes. Sections 16 - 17 prohibit the coercion of contributions or political services from public employees and others. See enclosed *Guide to Political Activity for State, County and Municipal Employees*.

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This office appreciates your interest in the campaign finance law and encourages you to contact us in the future if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan  
Director

MJS/cp